No. 482

In the Supreme Court of the United States

OCTOBER TERM, 1938

EDWARD JORDAN DIMOCK, AS SUBSTITUTED EXECUTOR OF THE LAST WILL AND TESTAMENT OF HENRY C. FOLGER, DECEASED, ETC., PETITIONER

v.

WALTER C. CORWIN, LATE COLLECTOR OF INTERNAL REVENUE, FIRST DISTRICT OF NEW YORK

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the District Court for the Eastern District of New York (R. 112–129) is reported in 19 F. Supp. 56. The opinion of the Circuit Court of Appeals (R. 154–163) is reported in 99 F. (2d) 799.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 17, 1938 (R. 164). The

petition for a writ of certiorari was filed November 22, 1938, and was granted January 3, 1939 (R. 167). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the full value of property held by the decedent and his wife as joint tenants, or only one-half thereof, may be included in the gross estate of the decedent as a measure for Federal estate tax where the decedent furnished the entire consideration for the property and the joint tenancy was created prior to the passage of the first Federal estate tax Act in 1916.

2. Whether the value of property given the surviving joint tenant by the decedent and contributed by her to the joint tenancy prior to the passage of the first Federal estate tax Act may be included in the decedent's gross estate where no consideration in money or money's worth was paid the decedent for such property.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set forth in the Appendix, *infra*, pp. 19–25.

STATEMENT

On June 11, 1930, Henry C. Folger died a resident of New York, his wife, Emily C. J. Folger, surviving him (R. 74). Mr. Folger was a New

York lawyer who had been Chairman of the Board of Directors of the Standard Oil Company of New York (R. 74, 76).

At the time of his death, Mr. Folger, with Mrs. Folger, owned, as joint tenants, shares of stock in a number of Standard Oil companies (R. 86, 87). The joint tenancies in these stocks were created prior to September 9, 1916, the effective date of the first Federal estate tax Act (R. 87).

In 1912 Mr. Folger began giving Mrs. Folger varying amounts of stock in the Standard Oil companies. Prior to May 29, 1912, he gave her 251 shares of capital stock of the Standard Oil Company of New York, and prior to March 10, 1914, he gave her 656½ shares of the Standard Oil Company (California) (R. 90). The shares of both of these companies were registered in her individual name on the books of the corporations (R. 45).

No consideration in money or money's worth was paid to the decedent, Henry C. Folger, for said stocks by Emily C. J. Folger (R. 47).

In 1914 Mr. Folger began establishing joint accounts with Mrs. Folger in the stocks of the Standard Oil companies, registering the stocks in their joint names (R. 86–87). Mrs. Folger transferred to these accounts some of the shares Mr. Folger had given her one or more years before. On February 9, 1915, she transferred ½ share of the Standard Oil Company (California) into a joint account (R. 91). She transferred 250 of the 251 shares of

the Standard Oil Company of New York into their joint names on February 9, 1916 (R. 90). On February 24, 1916, she transferred into their joint names the remaining 656 shares of the Standard Oil Company (California) (R. 91).

The shares transferred by Mrs. Folger to the joint names had a value as of the date of the death of Mr. Folger of $846,772.15 (R. 90, 91–92), and those transferred by Mr. Folger $2,760,247.04, making a total death value of the shares transferred by both of $3,607,019.19 (R. 89).

Only one-half of the value of the jointly held property was returned by the estate for taxation. The Commissioner of Internal Revenue assessed additional estate taxes based upon the inclusion of the full value of such property.

The estate paid the assessment, filed a timely claim for refund of the additional taxes paid, and upon its rejection brought this suit for recovery (R. 92–94).

The District Court concluded as a matter of law that the Commissioner (a) properly determined that the full value of the property held in the joint accounts should be included in the gross and net estates of the decedent for estate tax purposes, and (b) properly determined that no part of the value of the joint estates, representing property transferred thereto by Mrs. Folger, should be excluded from the gross and net estates (R. 98, 99). The Circuit Court of Appeals affirmed the judgment of the District Court (R. 164).

SUMMARY OF ARGUMENT

I. The court below correctly held that Section 302 (e) and (h) of the Revenue Act of 1926 is not unconstitutional in including in the decedent's gross estate the full death value of property contributed by the decedent to the joint tenancy prior to the enactment of the Revenue Act of 1916. In the case of a joint tenancy, as well as a tenancy by the entirety, the death of one tenant brings into being or ripens for the survivor property rights with respect to the whole of such character as to make appropriate the imposition of an estate tax upon the full value of the joint tenancy no matter when it was created. The decision of this Court in *Foster* v. *Commissioner*, 303 U. S. 618, on the authority of *Tyler* v. *United States*, 281 U. S. 497, and *Gwinn* v. *Commissioner*, 287 U. S. 224, and the decision in *Helvering* v. *Bowers*, 303 U. S. 618, solely on the authority of the *Tyler* case, show that upon the death of one joint tenant there is a shifting of rights as to the whole which justifies the tax.

Decisions of this Court involving solely the construction of prior statutes with respect to joint tenancies are not authority to the contrary here, where the only question concerns the legislative power. Nor are decisions in point which involve the power to tax transfers completed prior to the enactment of a statute taxing them.

II. The language used in Section 302 (e) clearly requires the inclusion in the gross estate of prop-

erty received by the survivor by gift from the decedent and contributed to the joint tenancy before the Revenue Act of 1916. The words "never to have been received or acquired" from the decedent contained in subdivision (e) must refer to any point of time and cannot be limited to mean a receipt after a particular event.

Furthermore, if these words were intended to refer only to a period subsequent to the enactment of the Revenue Act of 1916, a similar construction must be given to the words "except such part thereof as may be shown to have originally belonged to such other person" since the two phrases accompany each other in defining the exemption, and since if acquired from the decedent the acquisition must have coincided with or antedated the time when the property was owned. Such construction would result in a failure to exempt property not acquired by gift from the decedent and owned and contributed by the survivor prior to 1916.

If the portion of Section 302 (e) which refers to the acquisition from the decedent is a limitation on the exemption, it defines an "interest" subject to the tax and therefore intended to be included under Section 302 (h).

The administrative construction contained in the regulations has been to exclude only those contributions by the survivor which at no time in the past had been received as a gift from the decedent, and

the reenactment of the statute evidences legislative approval of the departmental interpretation. Even if the limiting phrase involving acquisition from the decedent was enacted solely to prevent avoidance of the tax, the power to include property acquired by the survivor from the decedent prior to 1916 existed and the plain words of the statute should not be changed in order to eliminate such transactions falling within the general class adopted by Congress to prevent avoidance.

ARGUMENT

I

SECTION 302 (e) AND (h) OF THE REVENUE ACT OF 1926 IS NOT UNCONSTITUTIONAL IN INCLUDING IN A DECEDENT'S GROSS ESTATE THE FULL VALUE OF A JOINT TENANCY CREATED BY CONTRIBUTIONS OF THE DECEDENT PRIOR TO THE REVENUE ACT OF 1916

The various stocks in the joint accounts of the decedent and his wife, the full value of which the Commissioner of Internal Revenue included in the decedent's estate, consisted of stock transferred by the decedent or his wife to the joint accounts prior to the enactment of the Revenue Act of 1916, the first Federal estate tax Act, stock purchased by the decedent and registered in the joint names prior to that Act, and the proceeds of stock dividends or the exercise of stock rights and increases by split-ups which were derived from the stock in the joint accounts prior to the Act (R. 88–89). The petitioner concedes that it was the legislative intent in enact-

ing Section 302 (h) of the Revenue Act of 1926 (Appendix, *infra*, p. 20) to include in a decedent's gross estate the full value of property contributed by the decedent to a joint tenancy before September 9, 1916, the effective date of the 1916 Act; but contends that in so far as the statute includes more than half of such value it is retroactive and unconstitutional. This contention was disapproved by the District Court and the Circuit Court of Appeals in the present case. It has been approved by the Circuit Court of Appeals for the Seventh Circuit in the similar case of *Jacobs* v. *United States*, 97 F. (2d) 784, pending on writ of certiorari, No. 391, present Term, and assigned for argument immediately before the present case.

The Government's position on this question is set out in full in its brief as petitioner in the *Jacobs* case, to which the Court is respectfully referred in order to avoid needless repetition. Briefly outlined, our position is that in *Tyler* v. *United States*, 281 U. S. 497, this Court permitted the inclusion in the gross estate of the full value of a tenancy by the entirety on the ground that the death of the one tenant brought into being or ripened for the survivor property rights of such character as to make appropriate the imposition of a tax upon the result; that the decisive similarity between tenancies by the entirety and joint tenancies lies in the right of survivorship, which is present in both cases; that upon the death of one

of the joint tenants and because of it his right of survivorship is extinguished and the survivor for the first time becomes entitled to the exclusive possession, use, and enjoyment of the whole property as his own, and only then becomes assured of the power of disposing of the property by will; and that the death of the one tenant resulting in a shifting of rights with respect to the whole makes appropriate the imposition of an estate tax upon the full value of the joint tenancy no matter when the estate was created.

We contend that the decision of this Court in *Foster* v. *Commissioner,* 303 U. S. 618, permitting the taxation of the full value of a joint tenancy created after the 1916 Act on the authority of the *Tyler* case and *Gwinn* v. *Commissioner,* 287 U. S. 224, shows that the taxable occasion is the death of one of the joint tenants, and that since this Court held at the same time in *Helvering* v. *Bowers,* 303 U. S. 618, solely upon the authority of the *Tyler* case, that the full value of an estate by the entirety created before 1916 may be included in the gross estate, and since the principles of the *Tyler* case apply as well to joint tenancies, the statute constitutionally embraces joint tenancies created prior to 1916.

We urge also that *Knox* v. *McElligott,* 258 U. S. 546, *Griswold* v. *Helvering,* 290 U. S. 56, and *Cahn* v. *United States,* 297 U. S. 691, are not contrary to our position here, since those cases involved only

the construction of a prior statute and did not decide the question whether or not there was a shifting of benefits at death sufficient to support the exercise of legislative power. Furthermore, we contend that *Nichols* v. *Coolidge*, 274 U. S. 531, *Helvering* v. *Helmholz*, 296 U. S. 93, and *White* v. *Poor*, 296 U. S. 98, are not in point since they involved transfers completed prior to the enactment of the statute, leaving nothing to pass at death while here the survivor's rights were not complete until the cotenant's death.

Moreover, this Court, in *Welch* v. *Henry* et al. (No. 13 Present Term), stated (pamph. pp. 5–6) that the decision in *Nichols* v. *Coolidge, supra,* and similar cases was rested on the ground that the tax could not reasonably have been anticipated when the taxpayer did the voluntary act which the statute later made the taxable event, and since the taxpayer might have refrained from the act had he anticipated the tax, the taxation was so oppressive as to deny due process. In the present case, however, the decedent, after enactment of the tax statute and before his death could have avoided the tax now complained of by severing the joint estate in the shares of stock here involved and by obtaining an exclusive interest in one-half of the property instead of a right to survivorship in the entire property. Certainly, in these circumstances, the tax statute cannot be said to be so oppressive as to deny due process of law.

Accordingly, for the reasons given in the Government's brief in the *Jacobs* case, we contend that Section 302 (e) and (h) is constitutional when construed, as it must be, to include in the decedent's gross estate the death value of all the property contributed to the joint tenancy prior to 1916.

II

THE STATUTE REQUIRES THE INCLUSION IN THE GROSS ESTATE OF THE STOCK GIVEN BY THE DECEDENT TO HIS WIFE AND CONTRIBUTED BY HER TO THE JOINT TENANCY BEFORE THE EFFECTIVE DATE OF THE REVENUE ACT OF 1916

In addition to the stock contributed by the decedent, his wife contributed to the joint tenancy in 1915 and 1916, before the enactment of the Revenue Act of 1916, certain stock the value of which at the date of the decedent's death, including stock split-ups, stock dividends, and stock acquired by the exercise of stock rights, was $846,772.15. The original stock was first acquired by his wife by gift from the decedent (R. 90, 91). The petitioner contends (Br. 30) that even if Congress could constitutionally have subjected the entire joint estate to the estate tax, the statute was not intended to include the stocks contributed by Mrs. Folger. We submit that the statutory language clearly requires their inclusion and prohibits the construction advanced by the petitioner.

1. Section 302 (e) of the Revenue Act of 1926 (Appendix, *infra,* p. 19) includes in the gross

estate the value of all property, to the extent of the interest therein held as joint tenants—

> * * * except such part thereof as may be shown to have originally belonged to such other person [the survivor] and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: * * *

The words "*never to have been* received or acquired," we think, are susceptible of but one meaning, namely: not ever to have been received or acquired in the manner stated at any point of time, either in the past or in the future.[1] We submit that to interpret this language as referring to an acquisition after a particular point of time does such violence to the ordinary meaning of the words as to be inadmissible under the guise of construction.

The petitioner would treat the section as if it read: "Except such part thereof as may be shown to have originally belonged to such other person [the survivor] and never, after the enactment of the Revenue Act of 1916, to have been received or acquired" from the decedent. So read, we think, the use of the word "never" is so inconsistent with the phrase "after the enactment of the Revenue Act of 1916" that the two cannot stand together. It is possible to construe the phrase "at any time"

[1] This construction adopts the correct and usual meaning of "never". Webster's New International Dictionary, Second Edition, 1938, defines "never" as "1. Not ever; not at any time; at no time, past, present, or future. * * *"

to mean at any time after a certain event, as in the cases cited by the petitioner (Br. 31). But the words "never to have been received or acquired" must refer to every point of time and not to a particular time or event.

2. Another reason suggests itself why the statute should not be construed in accordance with the petitioner's contention. The words "never to have been received or acquired from the decedent" are not a separate limitation on the exemption which may be independently construed but are a part of the whole phrase defining an exemption from the tax. Clearly the words "except such part thereof as may be shown to have originally belonged to such other person" refer to a date before the creation of the joint tenancy because obviously the property must have originally belong to the survivor before it was contributed to the joint estate. In fact the words "never to have been received or acquired" from the decedent must refer to a time coinciding with or antedating the time when the property originally belonged to the survivor. To obtain the exemption the petitioner must contend that the words "originally owned" include the survivor's property in this case originally owned and contributed to the joint estate before the 1916 Act. Consequently, the words "never to have been received or acquired" from the decedent must also include this property originally owned and contributed to the joint estate before 1916.

Conversely stated, if the words just quoted are construed to apply only to an acquisition occurring after the 1916 Act, a like construction must be given to the exemption of property originally belonging to the survivor and which could not have so belonged until after its acquisition, with the result that the exemption would not extend to contributions made by the survivor prior to the Revenue Act of 1916. No such result was, of course, intended.

If, as the petitioner asserts, the portion of the section which refers to the acquisition from the decedent is a limitation on the exemption of property contributed by the survivor, rather than an integral part of the exemption itself, it follows that such portion thereby defines an "interest" subject to the tax. In such event, aside from and in addition to the specific words employed, the intention to include property acquired by gift from the decedent and contributed to the tenancy before 1916 is evidenced by subdivision (h) of Section 302 of the Revenue Act of 1926, *infra*, which makes the provisions of subdivision (e) applicable to interests created, arising, or existing at any time prior to the enactment of the Act.

3. The administrative construction of Section 302 (e) supports the view that the subdivision applies to contributions made by the survivor prior to the Revenue Act of 1916 which were received as gifts from the decedent. The Revenue Acts of 1916 and 1918 excepted such part of the interest "as may be

shown to have originally belonged to such other person [the survivor] and never to have belonged to the decedent." Revenue Act of 1916, c. 463, 39 Stat. 756, Sec. 202 (c); Revenue Act of 1918, c. 18, 40 Stat. 1057, Sec. 402 (d).

The regulations under the 1916 Act provided that "Only such part of such property as can be shown never to have been owned by the decedent can be excluded from his gross estate" (Regulations 37, Art. IV-(3), promulgated as T. D. 2378, Treasury Decisions, Vol. 18, pp. 182, 184); while under the 1918 Act they provided that "The value of such property to be returned for tax is the value of the entire property, unless it can be shown that part of it originally belonged to the other joint owner and never belonged to the decedent" (Regulations 37, Revised, 1919, Art. 28).

The Revenue Act of 1921, c. 136, 42 Stat. 227, Sec. 402 (d), excepted such part of the interest—

> as may be shown to have originally belonged to such other person [the survivor] and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: *Provided,* That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than a fair consideration in money or money's worth, there shall be excepted only such part of the value of such

> property as is proportionate to the consideration furnished by such other person: * * *

Subsequent Revenue Acts have used the same language, with the exception of the substitution of the words "an adequate and full consideration" for the words "a fair consideration" made in the Revenue Act of 1926. Section 302 (e), Revenue Act of 1924, c. 234, 43 Stat. 253; Section 302 (e), Revenue Act of 1926 (Appendix, *infra*, p. 19).

The regulations under the 1921 Act (Regulations 63, 1922 Edition, Art. 24) provide in part as follows:

> Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate, depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth, forms no part of the decedent's gross estate. * * *

Similar language is contained in all subsequent estate tax regulations. See Article 23, Regulations 63; Article 23, Regulations 70 and 80 (Appendix, *infra*, pp. 21). Accordingly, it appears that the Treasury Department has construed the statute as excluding only those contributions of property made by the survivor which at no time in the past had been received as a gift from the decedent.

Under the circumstances, legislative approval of the departmental construction is to be implied. *Brewster* v. *Gage*, 280 U. S. 327, 336–337; *McFeely* v. *Commissioner*, 296 U. S. 102, 108; *Mass. Mutual Life Ins. Co.* v. *United States*, 288 U. S. 269, 272.

The petitioner contends that the limitation on the exemption was enacted solely for the purpose of preventing avoidance of the tax upon joint tenancies through a technical transfer from one to the other, followed immediately by a contribution to a joint tenancy, and that the section is not to be construed to include such contributions made before 1916 when there was no tax to avoid. There is nothing in the statute itself which would show that this was the sole purpose of the enactment. It may as well be assumed that in laying hold of joint estates because they accomplish the result of transferring property from a decedent to his joint tenant, Congress intended to include all property coming into the tenancy, mediately as well as immediately, from the decedent. There would be no lack of power so to tax if, as we have contended under Point I herein, the death of one joint tenant results in the shifting of substantial rights with respect to the whole property.

But even if the limitation was enacted solely to prevent avoidance, statutory language as clear as that contained in Section 302 (e) and similar provisions of prior Acts should not be distorted in order to except cases in which there was no intention to avoid the tax. If Congress has determined

that the statutory provision in question was necessary to prevent avoidance there is no occasion to inquire in a particular case whether there was really a purpose to avoid the tax. It is evident that the statute did not intend to require the Government to establish that a preliminary gift was in fact made as a device to avoid the tax. If Congress has determined that transactions of a particular character must be included to make the tax effective, it is competent and, we submit, not unusual, to provide that all such transactions should be included without inquiring in each case whether the particular gift was made for the purpose of tax avoidance. It would be sufficient, if necessary to sustain such a statute, that preliminary gifts are potentially capable of producing tax avoidance, and it is owing to the possibility that transactions of that kind will reduce the effectiveness of the statute, that Congress may bring them within the statutory scope. Cf. *Silz* v. *Hesterberg*, 211 U. S. 31, 40. The existence of such a power is not to be denied merely because some innocent transactions may be found in a specified class. *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 204. And where, as here, the power exists even apart from the right to prevent avoidance, the plain meaning of the statute should not be changed in order to eliminate some transactions within a general class embracing gifts which would actually avoid the tax.

Congress has the power to include such prior gifts and has exercised it in plain and compelling

language. There is no reason for reading into the statute an exception which Congress has nowhere indicated.

CONCLUSION

The court below correctly held that there was no lack of power to include in the gross estate the full value of a joint tenancy created before the Revenue Act of 1916, and that the statute intended to include in the decedent's estate the value of property acquired by the survivor by gift from the decedent and contributed to the tenancy before the enactment of that Act. Its decision should be affirmed.

Respectfully submitted.

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JANUARY 1939.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9, 70:

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so

acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

* * * * *

(h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

* * * * *

[U. S. C., Title 26, Sec. 411.]

Treasury Regulations 70 (1926 Ed.), promulgated as T. D. 3918 (Treasury Decisions, Volume 28, pp. 427, 453) under the Revenue Act of 1926:

ART. 22. *Property held jointly or as tenants by the entirety.*—The foregoing provisions of the statute extend to joint ownerships, wherein the right of survivorship exists, and specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed towards the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. The statute applies to all classes of property, whether real or personal, where the survivor takes the entire interest therein by right of survivor-

ship, and no interest therein forms a part of the decedent's estate for purposes of administration. It does not include property held by the decedent and any other person or persons as tenants in common.

ART. 23. *Taxable portion.*—The entire value of such property is prima facie a part of the decendent's gross estate, but as it is not the intent of the statute that there should be so included a greater part or proportion thereof than is represented by an outlay of funds, which, in the first instance, were decedent's own, or more than a fractional part equal to that of the other joint owner where neither had parted with any consideration in its acquirement, facts, which in a given case bring it within any one of the exceptions enumerated in the statute, may be submitted by the executor.

Whether the value of the entire property, or only a part, or none of it, enters into the make-up of the gross estate depends upon the following considerations: (1) So much of the property (whether the whole, or a part thereof) as originally belonged to the other joint owner, and which at no time in the past had been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth, forms no part of the decedent's gross estate. (2) Where the facts are otherwise the same as in (1), but the decedent paid to such other joint owner a consideration for the interest by him (the decedent) acquired in the property, then such portion of the value of the property, proportionate to the consideration so paid, constitutes a part of the gross estate. (3) Where the property, or a part thereof, or a part of the consideration wherewith it was acquired, had at any time been acquired by

the other joint owner from the decedent as a gift, or for less than an adequate and full consideration in money or money's worth, then such portion of the value of the entire property, proportionate to the consideration, if any, which in the first instance was paid from such other joint owner's own funds, forms no part of the gross estate. (4) Where the property was acquired by the decedent and his or her surviving spouse as tenants by the entirety by gift, will, or inheritance, then but one-half of the value of the property becomes a part of the gross estate. (5) Where acquired by the decedent and the other joint owner as joint tenants by gift, will, or inheritance, and their interests are not otherwise specified, or fixed by law, then one-half only of the value of the property is a part of the gross estate; or, where so acquired by the decedent and two or more persons, and the interests of the several joint tenants are not otherwise determinable, then the decedent and the other joint tenants surviving him shall each be deemed the owner of an equal fractional part, and the value of one only of such fractional parts is to be included in the gross estate.

The following are given as illustrative: (a) Where the decedent furnished the entire purchase price, the entire property should be included in the gross estate; (b) where the decedent furnished a part only of the purchase price, only a corresponding portion of the property should be so included; (c) where the decedent, prior to the acquisition of the property by himself and the other joint owner, gave the latter a sum of money which later constituted such other joint owner's entire contribution to the pur-

chase price of the property, the entire value of the property should be included; (d) where the other joint owner, prior to the acquirement of the property, received from the decedent, for less than an adequate and full consideration in money or money's worth, property which thereafter became, as such, or in a converted form, part of the purchase price of the property, the value of the property to be included is to be reduced proportionately to the consideration furnished by the other joint owner in the original transaction; (e) where the decedent furnished no part of the purchase price, no part of the property should be included; (f) where the decedent and spouse acquired the property by will as tenants by the entirety, one-half of the value of the property should be included.

Treasury Decision 4248, VII–2 Cumulative Bulletin 358 (1928):

> Article 22 of Regulations 68 and 70 is hereby amended by adding thereto the following sentence:
>
> "The statute applies only to joint ownerships based on the right of survivorship and created subsequent to September 8, 1916."

Treasury Regulations 70 (1929 Ed.), promulgated under the Revenue Act of 1926 as amended and supplemented by the Revenue Act of 1928:

> ART. 22. *Property held jointly or as tenants by the entirety.*—The foregoing provisions of the statute extend only to joint ownerships based on the right of survivorship and created subsequent to September 8, 1916. The statute specifically reaches property held jointly by the decedent and any other person or persons, or by the decedent and

spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. The statute applies to all classes of property, whether real or personal, where the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It does not include property held by the decedent and any other person or persons as tenants in common.

ART. 23. [This is the same as Article 23 of Regulations 70 (1926 Ed.) above quoted.]

Treasury Decision 4295, IX–2 Cumulative Bulletin 426 (1930):

> Article 22 of Regulations 70 (1929 edition) is hereby amended by substituting in lieu of the first sentence thereof the following:
>
> "The foregoing provisions of the statute extend to joint ownerships wherein the right of survivorship exists, regardless of when such joint ownerships were created."

Treasury Regulations 80 (1934 Ed.), promulgated under the Revenue Acts of 1926 and 1932 as amended:

> ART. 22. *Property held jointly or as tenants by the entirety.*—The foregoing provisions of the statute extend to joint ownerships wherein the right of survivorship exists, regardless of when such ownerships were created. The statute specifically

reaches property held jointly by the decedent and any other person or persons, or by the decedent and spouse as tenants by the entirety, or deposited with any person or institution carrying on a banking business in the name of the decedent and any other person and payable to either or the survivor, provided the decedent contributed toward the acquisition of the property so held or deposited, or acquired it by gift, bequest, devise, or inheritance. This section of the statute applies to all classes of property, whether real or personal, in the case the survivor takes the entire interest therein by right of survivorship, and no interest therein forms a part of the decedent's estate for purposes of administration. It has no reference to property held by the decedent and any other person or persons as tenants in common.

[Article 23 of these Regulations is substantially the same as Article 23 of Regulations 70 (1926 Ed.) above quoted and will not be repeated here.]

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